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SUPREME COURT, U.S.

NO. 82-5012

IN THE
UNITED STATES SUPREME COURT
OCTOBER TERM, 1982

LEON RUTHERFORD KING,

Petitioner

v.

THE STATE OF TEXAS,

Respondent

Petition For Writ Of Certiorari To
The Court Of Criminal Appeals Of Texas

RESPONDENT'S BRIEF IN OPPOSITION

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ATTORNEYS FOR RESPONDENT

QUESTION PRESENTED

- I. SHOULD THIS COURT REVIEW A MATTER WHICH PRESENTS ONLY A QUESTION OF STATE LAW?

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TO THE HONORABLE JUSTICES OF THE SUPREME COURT:

NOW COMES the State of Texas, Respondent herein, by and through its attorney, the Attorney General of Texas, and in response to Petitioner's Writ of Certiorari files this its Brief in Opposition.

OPINION BELOW

The opinion of the Court of Criminal Appeals of Texas affirming the conviction was delivered on March 24, 1982, and is reported at 631 S.W.2d 486 (Tex.Crim.App. 1982).

JURISDICTION

Petitioner seeks to invoke the jurisdiction of this Court under the provisions of 28 U.S.C. §1257(3).

CONSTITUTIONAL PROVISIONS AND STATUTES

Petitioner states that he bases his claim upon the Sixth, Eighth and Fourteenth Amendments to the United States Constitution. Also involved are Articles 35.14, 37.071(b)(2), and 42.12, V.A.C.C.P.

STATEMENT OF THE CASE

Petitioner was convicted in the 230th Judicial District Court of Harris County, Texas, for the capital murder of Michael Clayton Underwood while in the course of the aggravated rape, robbery and kidnapping of his companion. The facts surrounding the savage and sadistic acts committed by Petitioner upon his young victims are set out in detail at 631 S.W.2d 488-89, 490, 503, and need not be repeated here. The jury found Petitioner guilty on May 19, 1980, and punishment of death was assessed the following day.

SUMMARY OF THE ARGUMENT

There are no special and important reasons to review this case. The ground presented by Petitioner involves only the state appellate court's interpretation of state laws. Because no federal question is presented, this Court should decline to review this ground.

REASONS FOR DENYING THE WRIT

I.

The Question Presented For Review Is Unworthy Of This Court's Attention.

Rule 17 of the Rules of the Supreme Court provides that a review on writ of certiorari is not a matter of right, but of judicial discretion, and will be granted only when there are special and important reasons therefor. Petitioner has advanced no special or important reason in this case and none exists.

II.

This Court Should Refuse To Consider A Matter
Which Presents Only a Question of State Law

Petitioner complains that the trial court refused to allow him to examine the prospective jurors on their knowledge of the state parole laws in relation to life sentences, asserting that, under state law, parole eligibility is a part of the range of punishment for the offense of capital murder. When this argument was presented to the state appellate court, the court held:

It is the premise of this argument -- that parole eligibility is a part of the range of punishment -- which causes it to fail. By definition, the "range of punishment" is that within which the jury is authorized by law to assess a penalty. And such authorization, in turn, is accomplished through the instructions to the jury given by the trial court in "distinctly setting forth the law applicable to the case." Article 36.14, V.A.C.C.P. Contrary to the implication inherent in this contention, a jury has no power to effect or affect a minimum parole eligibility on any sentence; thus, the minimum term of incarceration required for that eligibility is clearly not a part of any "range of punishment" prescribed for an offense, including capital murder.

Appellant's first ground of error is overruled.

631 S.W.2d at 490 (footnote omitted).

Thus, based upon its interpretation of its own statutes, the state appellate court ruled that the ground presented by Petitioner was meritless. The decision of the state court interpreting its own laws and determining that, as a statutory matter, parole laws were not within the "range of punishment" to be assessed by a jury, presents only a question of state law. Since this Court will only review and decide federal questions, Henry v. Mississippi, 379 U.S. 443 (1965); Newsom v. Smyth, 365 U.S. 604 (1961); Missouri ex rel. Wabash Railway Co. v. Public Service Comm. of Missouri, 273 U.S. 126 (1927), this Court should decline to review the state court's interpretation of its own law.

CONCLUSION

For the reason discussed above, Respondent respectfully requests that the petition for certiorari be denied.

Respectfully submitted,

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PROOF OF SERVICE

I hereby certify that on the 10th day of September, 1982, one copy of Respondent's Brief in Opposition was mailed, postage prepaid, to Mr. Ken J. McLean, 723 Main, Suite 910, Houston, Texas 77002 and Mr. Terrance Gaiser, 609 Fannin, Suite 100, Houston, Texas 77002. All parties required to be served have been served. I am a member of the Bar of this Court.

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ATTORNEY FOR RESPONDENT

SUBSCRIBED AND SWORN TO BEFORE ME this 10th day of September, 1982.

Mary Jane Hale Kellogg
NOTARY PUBLIC in and for
Travis County, TEXAS

MARY JANE HALE KELLOGG
NOTARY PUBLIC
TRAVIS COUNTY, TEXAS
COMMISSION EXPIRES 10/1/84